

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

IN RE:

GUS TRUJILLO,

DEBTOR.

§
§
§
§
§

CASE NO. 01-21179-RLJ-13

MEMORANDUM OPINION

On January 17, 2002, hearing was held on the Trustee's motion seeking dismissal of this bankruptcy case with prejudice. The Trustee seeks dismissal because Mr. Trujillo failed to appear at the § 341 creditors' meeting set November 5, 2001. Mr. Trujillo contends that he never received notice of the creditors' meeting.

This case was filed October 1, 2001. Mr. Trujillo has filed two previous Chapter 13 cases, Case Nos. 00-20506-13 and 00-21099-13, both of which were dismissed by the court. Case No. 00-21099-13 was dismissed by order of the court pursuant to the court's memorandum opinion signed September 25, 2001. Such memorandum opinion was issued in connection with Mr. Trujillo's motion requesting reinstatement of the case which was dismissed with prejudice to refiling for 180 days. While the court found that the evidence was insufficient to warrant dismissal with prejudice, the court further admonished Mr. Trujillo and stated that a minor indiscretion in a subsequently filed bankruptcy case may well constitute cause justifying dismissal with prejudice in such case.

Although Mr. Trujillo contends he never received notice of the 341 meeting, upon review of the court's file, the court notes that the Notice of Commencement of Case, Fixing of Dates, and Meeting of Creditors Pursuant to 11 U.S.C. Section 341 was filed with the court October 15, 2001, with a certificate of service reflecting that it was served on Mr. Trujillo on October 12, 2001. Mr. Trujillo wanted to call his ex-wife and "neighbors" as witnesses to verify that he did not receive notice. However, he failed to file a witness and exhibit list and the court instructed Mr. Trujillo that he would not be allowed to call witnesses at the hearing. Mr. Trujillo's circumstance recalls his prior case, 00-21099-13, which was dismissed because of his failure to attend a hearing on the Trustee's motion to dismiss. There, as set forth in the court's prior memorandum opinion, contrary to Mr. Trujillo's pleadings and initial testimony, he admitted at the hearing on his motion seeking reinstatement that he had received a copy of the court's order setting hearing for July 6, 2001, and was therefore on notice of the hearing.

The court further notes that a hearing was held on December 6, 2001, in the instant case on Mr. Trujillo's motion requesting he be provided with the notice of the commencement of the case, which contained the 341 notice. By order entered December 11, 2001, the court held that Mr. Trujillo's motion was rendered moot because the 341 meeting was called November 5, 2001.

Mr. Trujillo, although appearing pro se, represents that he is a lawyer, but his license has been revoked by the State Bar of Texas. Given that this is his third bankruptcy filing, Mr. Trujillo should be fully aware that he is required to attend a 341 creditors' meeting. As stated in the court's prior memorandum opinion in Mr. Trujillo's prior case, "Mr. Trujillo is charged with the responsibility of monitoring his bankruptcy proceedings and adequately informing himself about the deadlines and requirements of his case. *See Prior Prods. Inc. v. Southwest Wheel-NCL Co.*, 805 F.2d 543, 546 (5th Cir. 1986)." Even if the court were to assume that Mr. Trujillo did not receive the 341 notice, such notice was on file with the court and Mr. Trujillo could have certainly obtained the notice by simply obtaining a copy from the court clerk.

The court is of the opinion that the circumstances of this case constitute cause justifying dismissal of this case with prejudice for a period of 180 days. The court will prepare an order.

Signed February ____, 2002.

ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE